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Fifty-third session
Agenda item 23

THE QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement submitted by the International Fellowship of Reconciliation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 March 1997]

Conscientious objection to military service and the right of asylum

1. The International Fellowship of Reconciliation (IFOR), an international spiritually based movement committed to active non-violence as a way of life, and a means of personal, social, economic and political transformation, strongly supports Commission resolution 1995/83 which reaffirms the right of conscientious objection to military service. In this regard, the IFOR draws particular attention to the reference in resolution 1995/83 to article 14 of the Universal Declaration of Human Rights which recognizes the right of everyone to enjoy freedom from persecution by seeking asylum in other countries. The inclusion of this reference in resolution 1995/83 underscores the need to strengthen the right of asylum for conscientious objectors in both principle and practice.

2. Founded in 1919 in response to the horrors of war in Europe, IFOR opposes the preparation of warfare and the use of violence to resolve conflicts. Throughout its history IFOR has argued that both conscripts and enlisted personnel have the right to refuse military service on grounds of conscience. This conviction is shared by millions of people throughout the world and is consistent with the teachings of the major world religions. It is for this reason that IFOR seeks to provide pragmatic alternatives for all those who are faced with the dilemma of refusing military service as conscientious objectors.

3. Although there has been encouraging progress with regard to the number of countries which have recognized the right of conscientious objection to military service and provided for alternative civilian service in their national legislation and practice since 1995, the implementation of resolution 1995/83 is far from universal. The lack of proper recruitment procedures, the discrimination against certain ethnic or religious groups within the armed forces, the use of military service for the purpose of political indoctrination, the harassment and abnormally harsh punishment of conscientious objectors are only a few examples of the irregularities which continue to exist in many countries and which characterize the practice not only of national military institutions, but of paramilitary organizations as well.

4. In the face of such violations of basic human rights, the absence of viable alternatives has often required conscientious objectors to flee the country in which they have been conscripted or are currently performing military service and seek asylum in another State. In spite of this fact, there is a lack of consensus, even among those nations which recognize the right of conscientious objection, on the degree to which conscientious objectors should be granted the status of refugees.

5. Recognizing the need under certain circumstances to provide protection to conscientious objectors in the form of asylum, various United Nations resolutions and publications have focused attention on this issue. In addition to resolution 1995/83 mentioned above, the General Assembly in resolution 33/165 of 20 December 1978 recognized the legitimacy of refusal to serve in military or police forces used to enforce apartheid and specifically called upon States to grant asylum to those who were compelled to leave their country of origin because of this refusal.

6. On an operational level, the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Geneva, 1979, paras. 167-174) established standards for resolving some of the questions concerning conscientious objection and the right of asylum. While acknowledging that the refusal to perform military service does not qualify anyone for refugee status per se, the Handbook does cite additional relevant criteria according to which a conscientious objector may claim such status. Briefly stated, these criteria fall into three different categories:

(a) Claims based on the fact that conscription is conducted in a discriminatory manner or that prosecution or punishment for evasion or desertion is discriminatory or sufficiently harsh as to qualify as persecution under the 1951 Geneva Convention relating to the Status of Refugees;

(b) Claims based on the refusal to participate in internationally condemned wars or to serve in armed forces which are being used to commit genocide, war crimes or gross violations of human rights;

(c) Claims based on a principled objection to all forms of military service, whether these principles be convictions of a religious, an ethical or a political nature, in countries where there is no provision for alternative service.

7. The statements linking conscientious objection and the right of asylum cited in the above resolutions and publications of the United Nations mark a significant step forward toward establishing universally acceptable criteria under which conscientious objectors can legitimately claim refugee status. The progress in this field is hampered, however, by the fact that the right of conscientious objection has not yet been codified in international law. Nor has it yet been adopted as constitutional law by a majority of the Member States. This is a continuing cause for concern for all those who uphold conscientious objection as a legitimate exercise of the right to freedom of thought, conscience, and religion as recognized in the resolutions of the Commission on Human Rights and the general comment of the Human Rights Committee on article 18 of the International Covenant on Civil and Political Rights.

8. In addition to voicing the need to strengthen the right of asylum for conscientious objectors in principle, IFOR would also like to draw attention to irregularities in the practice of granting asylum to conscientious objectors, using the case of objectors and deserters from the former Yugoslavia as an example. Before the war there was no legislation providing for conscientious objection in the former Yugoslavia. In April 1992, the Federal Republic of Yugoslavia (FRY) recognized the right of conscienticus objection in its Constitution. The law which was enacted in November 1993 is very restrictive, limiting the right of conscientious objection to recruits and thus effectively excluding officers and reservists. In Croatia, the right of conscientious objection was introduced into the Constitution of December 1990 and enacted as law in October 1991. The law is also quite restrictive and does not provide for forms of alternative service which are of a civilian character. In Bosnia and Herzegovina there is no provision for conscientious objection.

9. Because of the very restrictive nature of these laws or, in the case of Bosnia and Herzegovina, the lack of any provision whatsoever, the great majority of soldiers and conscripts involved in that conflict had and still have no legitimate means to express their convictions as conscientious objectors. In addition to the criterion of principled objection to military service there have been many documented cases of refusal and desertion based on the criterion of discrimination against ethnic and religious groups within the military as well as the refusal to serve in armed forces which are responsible for war crimes such as "ethnic cleansing", rape and other gross violations of human rights.

10. Recognizing this dilemma, and in accordance with an appeal by UNHCR to provide protection to all those who refuse to serve in an internationally condemned war, the European Parliament, in a resolution dated 28 October 1993, urged its members to provide a "legal status" for conscientious objectors and deserters from the former Yugoslavia and to refrain from deporting them.

11. A review of the practice of the member States of the European Union on this issue reveals that only in exceptional cases have conscientious objectors and deserters from the former Yugoslavia been granted status as refugees in accordance with the Geneva Convention. The vast majority were offered temporary protection on a humanitarian basis which was regularly extended pending the cessation of hostilities and the declaration of an amnesty.

Although temporary protection may be a viable alternative in certain cases, it is not an adequate expression of the right of asylum for conscientious objectors, but is rather an expression of tolerance on the part of the host country, a status which carries limited rights and which may be revoked at any time. In the case of objectors and deserters from the former Yugoslavia who refused to participate in an internationally condemned war and who, motivated by a legitimate fear of persecution, sought asylum in accordance with a resolution of the European Parliament, the practice of temporary protection has proven to be a humiliation and a source of mental hardship for the many thousands who are facing the threat of judicial and extrajudicial sanctions in their country of origin.

12. A final point of concern to which IFOR would like to draw attention is the issue of amnesty for conscientious objectors. Taking again the example of the former Yugoslavia, it should be noted that all the parties involved in that conflict have either enacted amnesty laws for objectors and deserters or agreed to do so. As a rule, these laws are restrictive, excluding officers and enlisted personnel, for example, in the case of the FRY. Nor do they adequately address the fact that objectors and deserters are often the object of social, political and economic discrimination. During the war against Croatia, for example, the government authorities in FRY conducted a campaign against objectors and deserters, publishing lists of names of all those who refused orders to report for military service. Prejudice and discrimination against objectors and deserters who, despite amnesty laws, are often regarded as cowards or traitors in their country of origin, is a further criterion which needs serious consideration in connection with the right of asylum.

13. The amnesty law for objectors and deserters enacted in the FRY on 22 June 1996 is a case in point. In a policy statement published on 16 August 1996, UNHCR took this law as evidence that those objectors and deserters to whom it applied were no longer in need of international protection. UNHCR mentioned in particular the large numbers of objectors and deserters among the Albanian population in Kosovo and added that there was no evidence at that time to suggest that they were receiving unduly harsh treatment because of their religious beliefs or ethnic background. Human rights organizations in Kosovo, however, have documented dozens of cases of harassment and imprisonment of objectors and deserters since the enactment of the amnesty law. Many of those sought by the military authorities are in exile in other European countries and face harsh sanctions should they be forced to return to the FRY.

14. In conclusion, IFOR requests the Commission on Human Rights to review the issue of conscientious objection and the right of asylum with respect to strengthening the right of asylum for objectors and deserters in both principle and practice. In this regard, IFOR asks the Commission:

(a) To urge States who have not yet done so to recognize the right of conscientious objection to military service in their national law and practice and to provide for alternative service in accordance with resolution 1995/83;

(b) To reaffirm the right of asylum for conscientious objectors under the Geneva Convention in accordance with the guidelines set by UNHCR in the Handbook on Procedures and Criteria for Determining Refugee Status;

(c) Noting that no information on asylum was submitted to the Secretary-General for his report (E/CN.4/1997/99), urge States to maintain and publish statistics regarding both the number of objectors and deserters who apply for asylum within their borders and the responses to those applications;

(d) Request UNHCR to monitor the situation of Albanian objectors and deserters in Kosovo with respect to reviewing its policy statement of 16 August 1996.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by International Educational Development Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 March 1997]

1. "The peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties" state the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, a body of principles developed by international legal experts. International Educational Development (IED) is extremely concerned that the concept of national, or State, security is used in a broad and arbitrary fashion in the legal systems of a number of countries, particularly in Asia. IED believes that this concept, which is often inadequately defined in the relevant laws, may result in arbitrary and unfair judicial procedures, and notes with concern that it is commonly used to curb the rights to freedom of expression and association and to suppress dissenting voices, especially those of critics of the Government and labour organizers.

2. This use of national security as a rationale for suppressing dissent has been used around the world. In recent years China has increasingly employed this rationale in justifying prosecutions and arbitrary detention of dissidents and has incorporated it into several new laws and regulations, including the 1993 State Security Law and the 1988 Law on the Protection of State Secrets. This process has culminated in the National People's Congress' revision of China's Criminal Code, passed in March 1997, which replaced crimes

of "counter-revolution" with those of "jeopardizing State security". Since the definition of "State security" and of what constitutes harm to it is left entirely to the discretion of the law enforcement authorities, IED believes that, unfortunately, this revision does not actually mean any substantive change in law or practice, as it does not lift any of the significant restrictions on the rights to freedom of expression and association. Indeed, it is resulting in a more repressive climate, as the severe sentences imposed on Wang Dan and Wei Jingsheng in the past year make abundantly clear.

3. The crime of "counter-revolution" has been used extensively throughout the history of the rule of the Chinese Communist Party. Punishments for "thought crimes" continued during the reform period, beginning with the prosecution of Wei Jingsheng, who was sentenced to 15 years' imprisonment in 1979, continuing with convictions of Democracy Wall activists across the country, and culminating with the crackdown on the 1989 protests, in which hundreds, even thousands, of people nationwide were convicted and sentenced on counter-revolutionary charges. In 1995, Wei Jingsheng was charged with "conspiracy to subvert the Government" through "crimes" which included "publishing anti-government articles abroad", discussing "the struggle" with his friends and raising money for victims of political persecution and their families, and was sentenced to a further 14 years' imprisonment.

4. Wang Dan, a student leader in the 1989 democracy movement, was charged both under the Criminal Code and the 1993 State Security Law and, in October 1996, found guilty of "conspiring to subvert the Government". His "crimes", similar to those with which Wei Jingsheng was charged, were merely his exercise of his internationally-recognized rights to freedom of expression and association. However, the court characterized these actions as "criminal acts which endangered the security of the State". Wang Dan was sentenced to 11 years in prison and 2 years' deprivation of political rights. After a three-hour-long hearing at which none of the witnesses the defence side requested be called were heard, the court recessed for half an hour and then issued a written verdict which virtually reproduced the indictment: this verdict had clearly been decided in advance. Wang's mother, Wang Lingyun, spoke in Wang Dan's defence, and his father and sister were also present in the courtroom. None of Wang's other family members or any of his friends were permitted to attend the trial, while no independent observers were admitted.

5. In the last few years, a number of individuals have been convicted of offences such as "leaking State secrets" and "espionage" for exercising their fundamental rights and freedoms. In December 1996, Chinese scholar Li Hai was found guilty of "prying into and collecting the following information about people sentenced for criminal activities during the 4 June 1989 period: name, age, family situation, crime, length of sentence, location of imprisonment, treatment while imprisoned". The verdict classified this information as "State secrets". Li Hai was sentenced to nine years' imprisonment and two years' deprivation of political rights. Li Hai had been held in incommunicado detention since he was apprehended in May 1995, and charged a year later with "leaking State secrets" under the Law on the Protection of State Secrets. In another example, Tibetan musicologist Ngawang Choepel was sentenced to 18 years' imprisonment and 4 years' deprivation of political rights in December 1996. He was charged with spying for the "Dalai Lama clique". The circumstances of the trial remain unknown, as do Choepel's

current whereabouts. A resident of India, he was apprehended while travelling in Tibet to produce a documentary on folk music and dance. He is not known to have ever been involved in any political activity. Protecting State security was mentioned as a rationale for prosecution in all of these cases.

6. IED and its partner organization Human Rights in China are concerned that the revision of the Criminal Code completes China's transformation into a "national security State" which began with the 1993 State Security Law and the 1988 Law on the Protection of State Secrets and its 1990 Implementing Regulations. According to the State Security Law and its Implementing Regulations, acts which jeopardize State security include conspiracy to overthrow the Government, splitting the country and subverting the socialist system. The definition of these acts is left to the discretion of the authorities. In addition, before the revision of the Criminal Code was enacted, the punishment of crimes included in the State Security Law was to be determined by reference to the corresponding part of the Criminal Code, namely the section on counter-revolutionary crimes. Likewise, State secrets are not legally defined. The State Secret Law and its Implementing Regulations contain no procedure for determining whether or not a particular item is a State secret. Moreover, they delegate the power to ascertain the rank of State secrets, and to decide independently what should be classified to the authorities. No meaningful system of judicial review is envisaged for either law in the case of challenges to official determinations of what constitutes harm to State security or a State secret. The State Security Law and the State Secrets Law thus are, in effect, two additional chapters of counter-revolutionary crimes. Eliminating the crime of "counter-revolution" without reforming these two pieces of legislation and their implementing regulations is only a legal disguise.

7. IED wishes to contrast this vague and politically-expedient concept of State security with the Johannesburg Principles, according to which legitimate national security interests are defined as "protect[ing] a country's existence or its territorial integrity against the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the Government". Reasons for restrictions the Principles find illegitimate are "protect[ing] the Government from embarrassment, or exposure of wrongdoing, or to entrench a particular ideology, or to conceal information about the functioning of its public institutions or to suppress industrial action". The Principles further state that restrictions on information about a country's human rights practices must not be imposed by using "State security" as a justification.

8. IED and its partner organization Human Rights in China (HRIC) urge the Government of China and the National People's Congress to proceed to a genuine revision of its Criminal Code based on the standards enshrined in the Johannesburg Principles on National Security so as to allow the greatest possible degree of freedom of expression and information, while protecting only genuine national security interests. Although freedom of expression is supposedly guaranteed in the Chinese Constitution, this right should also be recognized in practice. In addition, IED and HRIC recommend that the National People's Congress repeal the 1993 State Security Law and its Implementing Regulations, and that it thoroughly amend the 1988 Law on the Preservation of State Secrets to incorporate safeguards for basic rights.

9. IED calls on all Governments holding individuals detained for the non-violent exercise of their rights to freedom of expression and association under the rationale of "protecting national security" to release them immediately and unconditionally. It strongly recommends that, in all countries, national security interests be defined narrowly and that any restrictions on expression or information on grounds of protecting national security be clear and open to challenge through review by an independent court.

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